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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,032	10/01/2004	Eric Berreklow	2023-1003	4666
466	7590	04/27/2010	EXAMINER	
YOUNG & THOMPSON			TYSON, MELANIE RUANO	
209 Madison Street			ART UNIT	PAPER NUMBER
Suite 500			3773	
Alexandria, VA 22314				
NOTIFICATION DATE		DELIVERY MODE		
04/27/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/510,032

Examiner

MELANIE TYSON

Applicant(s)

BERREKLOUW, ERIC

Art Unit

3773

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED **16 April 2010** FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires ____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: **59-62 and 65-117**

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. Other: _____

/Melanie Tyson/
 Examiner, Art Unit 3773

/Darwin P. Erezo/
 Primary Examiner, Art Unit 3773

Continuation of 3. NOTE: Amending claims 107 and 108 to require a suction line extending from the suction source up to the suction nozzles is a new limitation not previously presented that would require further search and/or consideration.

Continuation of 11. does NOT place the application in condition for allowance because: the applicant's arguments are not persuasive. The applicant argues that elements 3 of Soble are not suction nozzles, but instead are used to supply fluid, and thus Soble fails to disclose one or more suction nozzles running in the shape of a loop and extending in circumferential direction of the working duct as recited in the claims. However, Soble clearly discloses that in the sleeves comprising multiple lumens, at least one of the lumens may be connected to an aperture and serve as a channel for suction, irrigation, or ventilation (for example, see column 3, lines 18-30). Therefore, it is clearly disclosed that elements 3 can be utilized for suction if so desired, in which elements 3 run in the shape of a loop and extend in circumferential direction of a working duct 1 as recited in the claims. The applicant also argues that unlike Soble's loops, the applicant's loops define an annulus, or are oval ring shaped. However, such a description is not recited in the claims. A "loop" as defined by, for example, Merriam-Online Dictionary, is a curved line that can be open or closed (like a closed ring). Therefore, although Soble's loops are open loops, it is the examiner's position that Soble discloses loops as recited in the claims. The examiner recommends amending the claims to require the structure argued and as disclosed in the specification in order to overcome the loops disclosed by Soble. Finally, the applicant's arguments with respect to whether it would be obvious to modify Soble to obtain such a feature is moot, since it is the examiner's position that Soble discloses the loops as recited in the claims.